

## Heffelfinger, Sheri

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**From:** Dingman, Cynthia  
**Sent:** Thursday, February 09, 2006 1:04 PM  
**To:** Heffelfinger, Sheri  
**Subject:** My story (Per our conversation)

LAW & JUSTICE INTERIM COMMITTEE  
PRO SE SUBCOMMITTEE  
FEBRUARY 17, 2006 MEETING  
**EXHIBIT 9**

Sheri,

Here's my story. Thanks for listening. Cynthia

In February, 2005, my husband and I purchased a home on 10 rural acres at the corner of Sunset Road and Sun Hill Drive in the KD Tracts "subdivision". In April, 2005, we were informed by the neighborhood road association that there was a dispute with Lewis and Clark County about the private or public status of Sunset Road and its use as an access to a proposed subdivision south of KD Tracts. (Sunset Road is an approximately 3-mile long private road off of Birdseye Road.) We were surprised upon hearing of the dispute because neither the former homeowner nor his real estate agent had disclosed information about a problem with the status of the road. We later learned that both were aware of the dispute and both had attended neighborhood association and County meetings about the dispute.

Sunset Road is an access easement that runs across our property to ensure that our neighbors in the KD Tracts subdivision have access to their land-locked property. It has always been a private road (built and maintained without County funds). In fact, in 1990, Lewis and Clark County affirmed Sunset Road's status as a privately-owned and maintained road in a recorded declaration.

We learned that in (approximately) November/December of 2004, Lewis and Clark County deputy attorney Paul Stahl verbally "declared" that Sunset Road is a public road, and therefore available for use by the planned 80+ home subdivision, Stallion Ridge Ranch Estates. Further, the County conditioned the developer to use Sunset Road and improve a 1/4-mile section of the road to County standards. The Stallion Ridge Ranch Estates is not land-locked, nor dependent upon the use of Sunset Road. Stallion Ridge Ranch Estates has five access points from Birdseye Road. (KD Tracts has one access point--Sunset Road--onto Birdseye Road.)

In May of 2005, our road association agreed to retain an attorney to research the status of Sunset Road to ensure that it is private and to open discussions with the County and the developer about their plans. After several weeks of research the attorney found that Sunset Road is, indeed, a private road. A letter was delivered to the County and the developer asking that they cease using Sunset Road. Several months went by with no word from the County or the developer concerning the attorney's letter. The attorney's phone messages to the County deputy attorney requesting a meeting about the dispute were not returned.

The vast majority of road association members were in favor of preserving Sunset Road as a private road; however, they were becoming nervous about the legal costs expended so far, and the potential that costs could exceed association funds. During a June, 2005 association meeting, the members voted that any more legal expenses would have to be approved by the members on a case-by-case basis.

In October of 2005, the Stallion Ridge developer started moving equipment onto Sunset Road. Knowing of our neighbor's concern's about legal expenses, my husband and I decided to seek private legal representation. Feeling pressured because the developer was about to start digging, we filed a TRO petition Pro Se while we looked for an attorney. I had NO help filing my petition from the Legal Library--all the researchers were on leave during that time period. The library's web site provided no assistance as to procedure, nor could I get answers from the County's Clerk and Recorder's office. I researched the issue and compiled a petition that I thought would be sufficient that named Lewis and Clark County and the Stallion Ridge Ranch Estates developer as co-defendants. The District Court Judge found that our petition was worthy on the merits, and signed a TRO.

I spent a week calling attorneys that had been referred by friends and neighbors or were second-hand referrals (a total of 15 law offices). Many lawyers turned out to be too busy to take our case, or had a conflict of interest with the County. Some attorneys never returned my calls.

We finally retained an attorney who, admittedly, has limited real estate law experience prior to the TRO hearing. At the hearing, it was clear that the deputy county attorney would use my ignorance of legal procedure as his basis for the argument that the case should be dismissed. In my TRO petition, I had not sufficiently described the injury that would result from the developers' and County's' actions, and had left myself open to a counter-suit from the developer. The

judge did allow us to re-file a petition and ordered briefs (this time with the help of an attorney).

Our attorney was annoyed that he would have to do case-law research in order to file a brief. I performed a more than 40-hours of research (becoming pretty good at reviewing case law) and forwarded it to our attorney. In fact, his brief turned out to be my research reworded only slightly.

Our attorney did not withdraw our original complaint and file a petition under declaratory judgment statutes (even though I had asked to consider it), but instead wrote a brief in favor of a permanent injunction. We were not told by our attorney that the complaint should include the road association members as co-petitioners (either he didn't know or didn't care) and his brief glossed over the injury issue, required under the injunction statutes, all resulting in a denial by the judge of a permanent injunction. However, the judge did not dismiss the case completely.

We're back where we started, only \$4000 poorer for the experience. Our (now former) attorney had the nerve to tell us it would cost us another \$20,000 to continue our case. We are looking for a new attorney (one with real estate law experience) and will be seeking a declaratory judgment that includes those road association members whom have expressed their willingness to continue to fight as co-petitioners. (Other road association members will join if they can be convinced that they don't have any legal exposure from a multi-million dollar developer.) I can quote the statutes and many cases involving prescriptive easements, adverse possession, eminent domain, etc., but I still don't know HOW to file and WHEN to apply which statute. I am confident that we have a legal standing on this issue, but I am discouraged and frustrated by the "you can't get there from here" position I find myself in. We don't qualify for pro-bono assistance, yet we don't have the \$20,000 in disposable income needed to protect our property.

Deputy county attorney, Paul Stahl, planned on outlasting middle-class homeowners' patience and funds as evidenced by his statement, "Let them sue us.\*" Is civil law in Montana biased in favor of those with money? Yep. And everybody knows it, including officers of the court sworn to uphold the law.

\*Statement made to a third party who is willing to testify.

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